IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.486 OF 1988

Deu Jakkanna Chambhar,
since deceased by his heirs
and legal representatives
A) Anusuya wife of Deu Chambhar
Since deceased by her heirs
and legal representatvies
1b) Bhupal Deu Chambhar
2c) Vasant Deu Chambhar
3d) Dhondubai wife of Tukaram Mane.
all residents at & Post:
Nandani, Taluka: Shirol,
District Kolhapur. .... Appellants.
(Org.Defendant No.1.)

Versus.

1. Sakharam Jakkanna Chambhar,
since deceased by his heir
Housabai wife of Dadu Deomane
2. Bhupal Deo Chambhar. .... Respondents.
(No.1-org.Plaintiff &
No.2-org.Defendant 2)

Shri P.D.Dalvi for the Appellants.

Shri G.R.Rege for the Respondent No.1.

CORAM : ABHAY S. OKA, J.

DATED : 1st September, 2004.

ORAL JUDGMENT.

1. This Appeal was admitted on 21st November 1988 by

passing the following order:

"Mr.Sakhare is heard. Appeal admitted as the substantial question of law is whether the Courts below were right in excluding Exh.45 and holding that the partition had taken place".

I have heard the learned Counsel appearing for the parties on the aforesaid substantial questions of law.

2. The Second Appeal is filed by the original Defendant No.1. The Respondent No.1 is the original Plaintiff and the Respondent No.2 is the Defendant No.2. The suit is for caliming partition and separate possession of 1/2 share of the Respondent No.1 in the suit house. The defence of the Appellant was that in the year 1949 partition has already taken place vide document at Exh.45 which is described as **farkat paatra**. The Court below held that the document at Exh.45 is not merely a memorandum of partition or **yadi** of partition which is already executed but the said document itself purports to create partition. Therefore, the Courts below held that the document at Exh.45 was a compulsorily registerable document and as the same was not registered, it cannot be read in evidence as the evidence of partition. Therefore, a decree was passed for partition and separate possession in favour of

Respondent No.1.

3. Shri Dalvi, the learned Counsel appearing for the Appellants submitted that the document at Exh.45 clearly records the factum of partition and the said document has been proved in evidence. He submitted that the decree for partition could not have been passed. Shri Rege, the learned Counsel appearing for the Respondent No.1 supported the impugned Judgment and Decree.

4. I have considered the rival submissions. After perusing the document, the Courts below have recorded the findings of fact that the document cannot be read as memorandum of partition or **yadi** of partition. The Courts have found that the recitals in the document at Exh.45 do not provide that the partition had already taken place. On the contrary, the recitals in the document disclose that the partition is effected by the said document creating rights in favour of the parties in respect of the property.

5. If this is the position, in view of the provisions of section 17(1)(b) read with section 49 of the Indian Registration Act 1908, the document was not admissible in evidence for want of registration. The argument that the said document can be read for collateral purposes

will not help the Appellant. Once the document purports to be a partition deed, it is compulsorily registerable and if the same is not registered, it cannot be read as an evidence of the previous partition.

6. Therefore, no fault can be found with the impugned Judgments and Decrees. If the document at Exh.45 cannot be read in evidence, the theory of previous partition cannot be accepted. There is no merits in the Second Appeal. The Second Appeal is dismissed with no order as to costs.

Judge.